

Bryce French  
[bryce@maxderbes.com](mailto:bryce@maxderbes.com)



Max J. Derbes, Inc.  
REALTORS ■

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**From:** Ken Rathburn [<mailto:krathburn@dwycambre.com>]  
**Sent:** Thursday, February 22, 2018 4:57 PM  
**To:** Bryce French  
**Subject:** Terminal Holdings Property acquisition

Bryce:

Attached is the draft Purchase & Sale Agreement.

In addition, since we are already almost two weeks into the "Inspection Period", we need the following, ASAP:  
A copy of the permit drawings for the previously approved Ram permit in electronic format. In addition, any CAD drawings would save us tremendous time.

Please let me know who is the direct contact for technical information/documentation such as, at Terminal Holdings, so that we can circumvent having to route every request through you.

Thanks,

Ken

J. KENDALL RATHBURN  
ATTORNEY  
DWYER, CAMBRE & SUFFERN  
3000 West Esplanade Avenue  
Suite 200  
Metairie, LA 70002  
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## **AGREEMENT TO PURCHASE AND SELL**

THIS AGREEMENT TO PURCHASE AND SELL (this "Agreement") is entered into by and between TERMINAL HOLDINGS, LLC ("Seller") and PLAQUEMINES PORT HARBOR & TERMINAL DISTRICT ("Purchaser") effective as of the last date that Seller or Purchaser executes this Agreement (the "Effective Date").

### **RECITALS**

WHEREAS, Seller is the owner of certain immovable property on the west bank of the Mississippi River in Plaquemines Parish, Louisiana described on Exhibit A attached hereto together with any and all buildings and other improvements located thereon, all rights, privileges and servitudes appurtenant thereto, and, to the extent owned by Seller, all minerals located thereon and thereunder, which property, improvements and minerals, if any, shall be referred to hereinafter collectively as the "Property"; and

WHEREAS, Purchaser desires to purchase the Property from Seller, and Seller has agreed to sell the Property to Purchaser, subject to, and upon the terms, conditions and covenants, herein contained.

NOW, THEREFORE, in consideration of the premises and the terms, conditions, covenants, representations, warranties and obligations herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, Seller and Purchaser hereby agree as follows:

1. **SALE AND PURCHASE OF PROPERTY.** Seller agrees to sell the Property to Purchaser, and Purchaser agrees to purchase same from Seller, in accordance with the terms and conditions of this Agreement.

The Property shall be sold to Purchaser by Seller, without any warranties of title whatsoever, except as to Seller's own actions, expressed or implied, and not even for the return or diminution of the Purchase Price (as defined in Section 2 below), but with full substitution and subrogation in and to all the rights and actions of warranty which Seller has or may have against all preceding owners and vendors, and subject to all servitudes, franchises, easements, rights-of-way, restrictions, covenants, leases, agreements, encumbrances, encroachments and other matters burdening or otherwise affecting the Property, or any part thereof, that are recorded in the public records of Plaquemines Parish; provided, however, that the foregoing shall not prohibit Purchaser from cancelling and terminating this Agreement for any reason or no reason during the Inspection Period (as defined in Section 15 below).

2. **PRICE.** The purchase price (the "Purchase Price"), for the Property shall be the sum of Thirty Million Five Hundred Thousand and no/100 DOLLARS (\$30,500,000.00), to be paid in cash at the Closing.

3. **DEPOSIT.** Upon execution of this Agreement by both parties, Purchaser shall deliver to Seller's Agent's Escrow Account , as hereafter defined, the sum of One Hundred

Thousand and no/100 DOLLARS (\$100,000.00), in cash (the "Deposit"). If the transaction contemplated by this Agreement is closed in accordance with the terms and provisions hereof, the Deposit shall be returned to Purchaser and Purchaser shall fund the entirety of the Purchase Price at Closing. In the event Purchaser shall fail to deliver the Deposit to Seller's Agent's Escrow Account within one (1) day of the Effective Date, this Agreement shall be null and void *ab initio*. To avoid any doubt, and in accordance with La. Civ. Code Art. 2624, the Deposit shall not be regarded as earnest money. Upon Seller's receipt of written notice of termination on or before the last day of the Inspection Period, or for failure of a Condition Precedent to be fulfilled prior to Closing, provided in the manner for notice set forth in Section 16 hereof, Seller shall return the Deposit to Purchaser forthwith.

4. CLOSING. Unless this Agreement is terminated on or before the last day of the Inspection Period as defined in Section 15 hereof, the act of cash sale of the Property to Purchaser (the "Closing") shall be passed before Purchaser's Notary Public on or before fifteen (15) days following satisfaction of all of the Conditions Precedent as described in Section 5 below and at a place and time selected by Purchaser (the "Closing Date"). At the Closing, Seller shall execute and deliver to Purchaser (i) the Act of Cash Sale, containing the provisions specified in Section 11, (ii) a Seller's/Owner's Affidavit as reasonably required by the title insurance company and reasonably acceptable to Seller, (iii) an affidavit that Seller is not a foreign person under Section 1445 of the Internal Revenue Code, (iv) a resolution and Seller's organizational documents verifying the authority of the signatories of Seller to execute the Act of Sale and related closing documents, (v) a settlement statement, and (vi) a Seller's certificate confirming all of the representations made herein as of the Closing.. All documents of sale shall be approved by Seller's and Purchaser's counsel prior to Closing, which approval shall not be unreasonably withheld.

5. CONDITIONS PRECEDENT. This Agreement and the sale of the Property shall be subject to the following conditions precedent ("Conditions Precedent"), failure of any of which (unless the failure is waived in writing by Purchaser) shall void this Agreement and result in an immediate refund to Purchaser of the Deposit thereon:

A. Merchantability of Title. Seller shall deliver to Purchaser a valid, good, and merchantable title to the Property subject only to taxes not yet due and payable for the year in which the Closing occurs and the matters shown on the Title Report and accepted or deemed accepted by Purchaser as Permitted Exceptions as defined in Section 6.C of this Agreement.. In the event that Seller is unable to deliver such title at Closing, then Purchaser, in Purchaser's sole discretion, shall have the right to declare this Agreement null and void, whereupon the Deposit shall be returned and paid to Purchaser forthwith.

Purchaser acknowledges all or portions of the Property may be currently leased to third parties and that Purchaser shall be given the opportunity to inspect such leases during the Inspection Period, as herein defined. Purchaser further acknowledges that there is no revenue currently generated by the Property, and that the Property is or may be subject to the contemplated State of Louisiana Coastal Protection and Restoration Authority Mid-Barataria Sediment Diversion Project. Upon expiration of the Inspection

Period, such matters shall be considered Permitted Exceptions, as herein defined, and shall not render the Property unmerchantable.

B. Liens and Assessments. All monetary liens, mortgages, encumbrances, privileges and assessments of any kind, if any, recorded, unrecorded, and/or due against the Property as of the date of the Closing shall be satisfied by Seller at or prior to the Closing.

C. Taxes. Real estate taxes up to and including those due and exigible for all tax years prior to the year in which the Closing occurs shall be paid by Seller. Real estate taxes for the year in which the Closing occurs shall be prorated between Seller and Purchaser as of the Closing Date, with the Seller's pro-rated portion to include the Closing Date. Real estate taxes, if any, for years beyond the year of the Closing Date shall be the responsibility of Purchaser, and Seller shall have no liability therefor.

D. Council Approval.

(a) Plaquemines Parish Council, as the sole governing authority of Purchaser, shall have approved Purchaser's acquisition of the Property and the issuance of revenue bonds sufficient to fund the transaction herein described ("Bond Authority"). Bond Authority shall be requested no later than the next regularly scheduled Plaquemines Port and Terminal District meeting, which is at least fourteen (14) days following the expiration of the Inspection Period.

(b) Within One Hundred Twenty (120) days of Bond Authority, the revenue bonds shall be prepared, issued, and closed ("Bond Issuance").

6. CLOSING AND CURATIVE COSTS AND OBLIGATIONS. The costs incurred in connection with this Agreement and the Closing shall be payable as follows:

A. Title Examination. All title examination and/or title insurance costs shall be paid by Purchaser. Within five (5) days of the Effective Date, Seller shall provide copies of any and all existing title reports, documents, surveys and maps affecting the Property as are reasonably available in its records to Purchaser. Within the Inspection Period, Purchaser shall provide to Seller a title insurance commitment written from a national title insurance company and a full copy of all title documentation it has procured (the "Title Report").

B. Survey. A survey of the Property may be undertaken by Purchaser at its sole cost and expense (the "Survey"). If a Survey is undertaken, a copy thereof shall be provided to Seller.

C. Objections to Title Report and Survey. Within the Inspection Period, Purchaser shall make any objections to the Title Report and/or the Survey to Seller in

writing in the manner provided for notice in Section 16 hereof with specific reference to the objections (the "Objections"). If Purchaser does not notify Seller of Objections prior to expiration of the Inspection Period, then all of the exceptions contained in any Title Report, other than monetary liens, shall be Permitted Exceptions as hereinafter defined, and Purchaser will be obligated to take title to the Property subject to such title exceptions and matters (subject, however, to Seller's obligation to deliver merchantable title to Purchaser at Closing as set forth hereinabove). Should Purchaser notify Seller of Objections, Seller shall have the right but not the obligation to undertake or pay for such curative work. Seller shall advise Purchaser of its decision in writing in the manner provided for notice in Section 16 hereof within one (1) week of the date the Objections are delivered to Seller. Should Seller refuse to undertake to cure the Objections, Purchaser may decide (i) to go forward to Closing subject to the Objections (in which event the Title Report and Survey matters shall be considered "Permitted Exceptions"), (ii) to effect or pay for the curative work itself, or (iii) to terminate the Agreement. In any event, Purchaser's decision must be communicated to Seller by timely written notice in the manner provided in Section 16, within one (1) week of receipt of Seller's notice of refusal to cure. All curative work undertaken by either party must be completed on or before thirty (30) days from the date of Purchaser's receipt of notice that Seller shall undertake such curative work, unless otherwise agreed in writing. In the event that this Agreement is terminated pursuant to this Subsection 6.C., the Deposit shall be returned to the Purchaser.

D. Certificates. All costs of any conveyance, mortgage, paving, tax research, or other certificates, if required by Purchaser's Notary Public in connection with the Closing, shall be paid by Purchaser.

E. Seller's Closing Fees. No Closing fees or costs of any kind, other than Seller's attorneys' fees and costs, the cost of any title curative work agreed to by Seller, prorated taxes, and prorated rents, if any, shall be assessed to or paid by Seller in connection with the Closing, it being the understanding and agreement of the parties that Seller shall bear no other costs or expenses whatsoever in connection with the Closing, except as set forth above and except for (i) prorated real estate taxes for the year of the Closing, and (ii) the expense of recording any mortgage, lien or assessment cancellations, as provided in Subsection 5.B. above.

## 7. MAINTENANCE; OCCUPANCY AND POSSESSION.

A. Maintenance of Property Until Closing. Seller represents, warrants and covenants to Purchaser that, until Closing, Seller shall maintain the Property in its present condition and will not enter into any contract, covenant, lease, deed, restriction, right of way, easement, mortgage or other agreement encumbering or otherwise affecting the Property or title thereto or permit any of the above to occur, unless first consented to in writing by Purchaser, which consent may be withheld in Purchaser's sole discretion.

B. Occupancy and Possession. Purchaser shall receive full possession and occupancy of the Property immediately upon completion of the Closing. Seller

acknowledges that there is currently a business trailer/operation located on the Property, as well as grazing animals. Seller agrees to relocate or remove all business operations and grazing animals prior to the Closing Date, and to terminate any written or oral leases related to such activities.

8. DEFAULT BY SELLER. In the event that Seller fails or refuses to convey the Property in accordance with this Agreement for any reason (other than inability to satisfy the Conditions Precedent as set forth in Section 5 hereof), then Purchaser shall have, as its sole and exclusive remedies either (i) the right to demand specific performance, in which case the Deposit shall be, at Purchaser's option, be returned to Purchaser at closing with the full Purchase Price being paid by Purchaser, or with the Deposit applied to the Purchase Price, or (ii) the right to terminate this Agreement and to demand the return of the Deposit in full and a like amount as damages.

9. DEFAULT BY PURCHASER. If (i) Purchaser has not timely elected to terminate this Agreement in the manner for such notice set forth in Section 16; and (ii) Bond Authority has been received, and, thereafter, Purchaser fails or refuses to consummate the purchase of the Property pursuant to this Agreement; and (iii) Seller is not in default, then Seller shall have the right to terminate this Agreement and declare in writing the Deposit *ipso facto* forfeited as consideration of Seller's having withdrawn the Property from the market so long as bound by this Agreement. Further, Seller shall have the right to immediately re-offer the Property for sale. If any of the Conditions Precedent set forth in Paragraph 5, *supra*, are unable to be satisfied, Purchaser shall be deemed not in default and shall be entitled to an immediate return of the Deposit.

10. ATTORNEYS' FEES. Each party, absent a default by the other party, shall be responsible for the fees and costs of their respective legal counsel. If any party fails to comply with the terms of this Agreement, then such defaulting party is obligated to and agrees to pay all reasonable attorneys' fees and costs incurred by the non-defaulting party in enforcing its respective rights.

11. WAIVERS OF WARRANTIES AND OTHER PROVISIONS OF ACT OF SALE. Except as specifically set forth herein, Seller has not made and shall make no representation or warranty concerning the condition, or the suitability for any purpose, of the Property including any and all improvements thereon, and the act of sale (the "Act of Sale") by Seller to Purchaser shall contain the following provisions or such other provisions as are mutually agreed upon by both parties:

*"A. Seller hereby conveys to Purchaser all right, title and interest of Seller in and to the Property, without any warranties whatsoever, including as to title, except as to Seller's own acts, not even for the return or diminution of the Purchase Price; it being understood that Purchaser takes the Property "AS IS" and "WHERE IS," without any warranty of any kind whatsoever, even as to mineral rights, metes and bounds, the operation or suitability of such Property for the use intended by Purchaser, and without regard to the presence of apparent or hidden defects and with Purchaser's full and complete waiver of any and all rights for the return of all or any part of the purchase*

price by the reason of any such defects. Purchaser acknowledges and declares that neither Seller nor any party whomsoever, acting or purporting to act in any capacity whatsoever on behalf of Seller, has made any direct, indirect, explicit or implicit statement, representation or declaration, whether by written or oral statement or otherwise, and upon which Purchaser has relied, concerning the existence or non-existence of any quality, characteristic or condition of the Property. Without limiting the foregoing, Purchaser acknowledges and declares that neither Seller nor any party whomsoever, acting or purporting to act in any capacity whatsoever on behalf of Seller, has made any representation or warranty as to, and Purchaser expressly waives any warranty as to: (a) the quality, nature, adequacy or physical condition of the Property (b) the quality, nature, acreage, adequacy or physical condition of soils, sub-surface support or ground water at the Property; (c) the existence, quality, nature, adequacy or physical conditions of any utilities serving the Property, or access thereto; (d) the development potential of the Property or its habitability, merchantability, fitness, suitability or adequacy for any particular purpose; (e) the zoning classification, use or other legal status of the Property; (f) the Property's, or its operations', compliance with any applicable codes, laws, regulations, statutes, ordinances, covenants, setback requirements, conditions or restrictions of any governmental or quasi-governmental entity or of any other person or entity; (g) the quality of any labor or materials relating in any way to the Property; (h) the nature, status and extent of any right of way, servitude, lease, right of redemption, possession, lien, encumbrance, license, reservation, covenant, condition, restriction or any other matter affecting title to the Property; (i) the income to be derived there from or expenses to be incurred with respect thereto; (j) whether the Property may be considered or designated "wetlands" for which required permits for improvements, use and occupancy have not been obtained and may not be obtainable from federal, state, parish agencies or other governmental agencies, and (k) the warranty of fitness and the warranty against redhibitory vices and defects, whether apparent or latent, imposed by Louisiana Civil Code Articles 2520 through 2548 and the warranty of fitness for intended purposes or guarantee against hidden or latent redhibitory vices under Louisiana law, and the warranty imposed by Louisiana Civil Code Articles 2475, 2520 through 2548, and any other applicable state or federal law and the jurisprudence thereunder. Purchaser hereby acknowledges that it (i) has had full, complete and unlimited access to the Property for any and all tests and inspections which Purchaser, in Purchaser's sole discretion, deems sufficiently diligent for the protection of Purchaser's interests, and (ii) relies solely on Purchaser's own inspection and investigation of the Property and not on any warranties or representations from Seller or any other person or entity as to the foregoing matters.

B. Purchaser acknowledges that the Property is located in a Flood Plain District under the Plaquemines Parish Comprehensive Zoning Ordinance, as presently enacted, and is not located within publicly owned and U. S. Army Corps of Engineers certified hurricane protection levees or pump drainage systems, but which does include drainage canals which comprise a part of the Property, and that neither Seller, any of their parents, subsidiaries or affiliates, nor, to the best of Seller's knowledge,

*Plaquemines Parish or the Plaquemines Parish Government, or their elected officials, officers, agents, successors or assigns, have or assume any responsibility or liability in connection therewith.*

C. *This sale is made by Seller, and accepted by Purchaser, subject to all servitudes, alienations and encroachments, including, but not limited to, those for utility lines, roadways, drainage ditches, common driveways, and other servitudes, alienations and encroachments, on, in or above the Property that are recorded in the public records of Plaquemines Parish and all levee servitudes, navigation servitudes, and riparian rights in favor of state, federal, parochial or municipal bodies or to the public made applicable to the Property by operation of law. Reference to and notation of these matters, however, is made solely for informational purposes and is not to be construed as a renewal or recreation thereof in any manner whatsoever, and nothing contained in this act is intended or shall be construed as an acknowledgment of, or as an interruption of any prescription running against, any servitude, easement or restriction referred to in this act.*

*Without limiting the generality of the foregoing and as further consideration for this sale, Purchaser hereby accepts the Property in its existing environmental condition and waives, discharges, and releases Seller, its affiliates, predecessors, successors, assigns, partners, officers, employees, directors, agents, members, managers and insurers from any and all claims and/or causes of action which Purchaser may have or hereafter be otherwise entitled to, whether affecting person and/or property, for (i) any environmental liabilities arising from the Property, including any claims, demands, causes of actions (both public and private), judgments, attorneys' fees, costs, expenses, penalties and fines, imposed or assessed under any federal, state or local environmental law, rule, regulation, or ordinance involving the environment including, but without limitation Article 2315.3 of the Louisiana Civil Code, Statewide Order 29-B by Office of Conservation, Department of Natural Resources, State of Louisiana, La. R.S. 30:29, the Louisiana Abandoned Oilfield Waste Site Law (La. R.S. 30:71, et seq.), as amended, the Louisiana Oilfield Site Restoration Law (La. R.S. 30:80, et seq.), the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), as amended, the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. §9601, et seq.), as amended, , the Solid Waste Disposal Act (42 U.S.C. §6901, et seq.), the Superfund Amendments and Reauthorization Act of 1986, and the Toxic Substance Control Act (15 U.S.C. §2601, et seq.), as amended, the Rivers and Harbors Act (33 U.S.C. § 401, et seq.), as amended, the Oil Pollution Act (33 U.S.C. § 2701, et seq.), as amended, the Atomic Energy Act (23 U.S.C. § 2014, et seq.), as amended, and the Safe Drinking Water Act (42 U.S.C. § 300f, et seq.), as amended, and any federal, state or local rules, regulations and ordinances adopted thereunder (collectively, the "Environmental Laws"), and/or (ii) the existence of any Hazardous Materials in, on, under or from the Property. "Hazardous Materials" includes mold, mildew, and other fungi (including but not limited to aspergillus/penicillium, bipolaris/derschlera, and stachybotrys), lead paint, asbestos, petroleum products, naturally occurring radioactive materials, and/or any materials defined as "hazardous pollutants", "toxic pollutants", "pollutants", "hazardous substances", "toxic substances", "hazardous waste", "hazardous*



*constituents" or "solid waste" or language of similar import under, or is otherwise regulated by, any Environmental Laws as well as any other substance or substances the presence of which requires investigation, removal, remediation or restoration."*

*D. Anything contained herein to the contrary notwithstanding, Seller shall have no obligation or responsibility to Purchaser or to any other person or entity, to repair, operate, maintain, improve or replace any roadways, drainage and other canals, utility lines, ramps, levees, pumping stations or other improvements situated on or serving the Property or any other properties in the vicinity of the Property.*

*E. Seller and Purchaser acknowledge and stipulate that the Purchase Price was negotiated and agreed upon after consideration of all of the disclaimers and waivers of warranties herein set forth. Purchaser declares and acknowledges that Purchaser has read the foregoing provisions, that the foregoing waivers have been brought to the attention of Purchaser and explained in detail to Purchaser, and that Purchaser has voluntarily and knowingly consented to all of the disclaimers and waivers of warranties herein set forth. By its signature, Purchaser expressly acknowledges all such waivers.*

*F. This sale is made by Seller, and accepted by Purchaser, without reservation by Seller, its successors and assigns, of any interest in oil, gas or other minerals in or under the Property, but without any representations or warranties of any nature or kind with respect thereto, even as to title with respect to mineral rights."*

## **12. REPRESENTATIONS AND WARRANTIES.**

**A. Representations and Warranties of Seller.** Notwithstanding anything contained in this Agreement to the contrary, Seller does hereby represent and warrant (which such representations and warranties shall be true and accurate as of the Closing Date) the following in order to induce Purchaser to enter into this Agreement:

- i.** Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Louisiana, and is authorized to conduct the business in which it is engaged.
- ii.** The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite company actions of Seller. This Agreement constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.
- iii.** The execution, delivery and performance of this Agreement and the consummation by Seller of the transactions contemplated hereby will not (a) violate any law or any order of any court or governmental authority binding against Seller or its assets; (b) result in a breach or default under any contract or other binding commitment of Seller or any provision of the

organizational documents of Seller; or (c) require any consent or approval that has not been given.

- iv. There are no actions, suits, arbitrations, governmental investigations or other proceedings pending or, to the knowledge of Seller, threatened against Seller or affecting the Property before any court or governmental authority.
- v. There are no pending or, to the best of Seller's knowledge, threatened condemnation actions or special assessments of any nature with respect to the Property.
- vi. Seller has not received any notice from any governmental or regulatory authority of the presence or release of any substance that is regulated under any Environmental Laws as a pollutant, contaminant or toxic, radioactive or otherwise hazardous substance, including petroleum, its derivatives or byproducts in other hydrocarbons (collectively and individually, "Hazardous Substances") that would cause the Property to be in violation of any applicable Environmental Laws nor has Seller received notice from any governmental or regulatory authority or has any actual knowledge that the Property is not in compliance with applicable Environmental Laws. For purposes hereof, (Environmental Laws) means any and all federal, state, parish and local statutes, laws, regulations and rules in effect on the date of this Agreement relating to the protection of the environment or to the use, transportation and disposal of Hazardous Substances.
- vii. There are no purchase contracts, options or other agreements of any kind whereby any person or entity other than Purchaser will have acquired or will have any right to acquire title to the Property or any portion thereof.

B. Representations and Warranties of Purchaser. Notwithstanding anything contained in this Agreement to the contrary, Purchaser does hereby represent and warrant (which such representations and warranties shall be true and accurate as of the Closing Date and which shall survive the Closing) the following in order to induce Seller to enter into this Agreement:

- i. Purchaser is an Agency of the State of Louisiana validly existing and created by the Louisiana Legislature in 1954 pursuant to Act No. 567, and duly authorized to conduct the business in which it is engaged. Purchaser has the statutory authority to acquire and own real estate, and pay consideration therefor.
- ii. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized, and this Agreement constitutes a valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.

- iii. The execution, delivery and performance of this Agreement and the consummation by Purchaser of the transactions contemplated hereby will not (a) violate any law, regulation, ordinance or order of any court or governmental authority binding against Purchaser or its assets; (b) result in a breach or default under any contract or other binding commitment of Purchaser or any provision of the Charter thereof; or (c) require any consent or approval that has not been given. Purchaser does not require the consent of the Plaquemines Parish Council to execute and enter into this Agreement or to deliver the Deposit to Seller's Agent.

13. REAL ESTATE AGENTS. Purchaser represents and warrants that no real estate agent or broker has been involved in, or been the procuring cause of, this transaction on behalf of Purchaser, and that no commission or other fee is due in connection therewith. Seller represents and warrants that it has been represented by Bryce French of Max J. Derbes Inc., and shall, at Closing, pay to Max J. Derbes, Inc. a total sale commission of four percent (4%) of the gross sale price at Act of Sale.

14. ASSIGNMENT. This Agreement shall bind and inure to the benefit of the heirs, successors, administrators, executors and assigns of the respective parties. Seller shall not assign this Agreement without the prior written consent of Purchaser, which consent may be withheld by Purchaser in its sole discretion. Purchaser shall have the right to assign this Agreement and its rights under this Agreement at any time at or prior to Closing with the prior written consent of Seller, which consent shall not be unreasonably withheld. Purchaser agrees that if Purchaser assigns its rights to this Agreement, Purchaser shall remain liable to Seller under this Agreement.

15. CONTINGENCY FOR INSPECTIONS OTHER THAN TITLE MATTERS AND SURVEY. In addition to the Purchaser's right to inspect Title and Survey matters set forth in Section 6. A-C hereof, and through May 9, 2018 (the "Inspection Period"), Purchaser may have its representatives complete an environmental study of the Property including but not limited to a Phase I and Phase II environmental site assessment, and inspect and examine the physical condition, etc., of the Property, obtain such other inspections or studies as it may deem appropriate, and Seller shall provide all reasonable cooperation in allowing Purchaser's representatives access to all areas of the Property during regular business hours. During the Inspection Period, Purchaser shall have access to any leases, third party contracts, soil reports, environmental reports, permits, licenses, fleeting contracts and financial statements reflecting fleeting revenues and expenses, geotechnical data, wetland reports, engineering reports, litigation information, insurance information, real estate tax bills for 2016 and 2017, legal notices and other documents relating to the Property that are in the possession of Seller. Seller's duty to cooperate shall extend only to currently existing documentation in its possession and/or control, if any such documentation exists, and Seller shall have no duty to order, obtain or purchase documentation that is not currently in existence or that is not in Seller's possession, custody, and/or control. During the Inspection Period, Seller will reasonably cooperate with Purchaser in facilitating Purchaser's examination of the Property and in providing all relevant documentation in Seller's possession and/or control. Purchaser may terminate the Agreement for any reason, or no reason, during the Inspection Period. If Purchaser is not satisfied with the condition of the

Property for any reason or for no reason, then Purchaser, in its sole discretion, may elect to terminate this Agreement at any time prior to the expiration of the Inspection Period. Should Purchaser elect to terminate this Agreement pursuant to this Section, Purchaser shall be entitled to the return of its the Deposit.

Notwithstanding the foregoing, (a) the costs and expenses of Purchaser's investigations shall be borne solely by Purchaser, (b) immediately after any entry onto the Property, Purchaser shall restore the Property to the condition which existed prior to Purchaser's entry thereon and investigation thereof, (c) Purchaser shall not interfere with, interrupt or disrupt the operation of Seller's business on the Property and, further, such access by Purchaser and/or its agents shall be subject to the rights of any tenants or occupants of Seller on the Property, (d) Purchaser shall not permit any mechanic's or materialman's liens or any other liens to attach to the Property by reason of the performance of any work or the purchase of any materials by Purchaser or any other party in connection with any studies or tests conducted pursuant to this Agreement, (e) Seller shall, until the Closing, be the sole owner of any photographs, samples, analytical reports, geotechnical reports, surveys and environmental reports obtained by Purchaser during the course of Purchaser's investigations, and (f) if this Agreement is terminated by either party for any reason, Purchaser shall promptly return all originals and copies of such photographs, samples, analytical reports, geotechnical reports, surveys and environmental reports to Seller.

Purchaser shall take all reasonable actions and implement all protections necessary to ensure that all actions taken in connection with the investigations and inspections of the Property, and all equipment, materials and substances generated, used or brought onto the Property pose no material threat to the safety of persons or the environment and cause no damage to the Property or other property of Seller or other persons. Purchaser shall promptly deliver to Seller a copy of all environmental analyses and reports obtained and inspections it prepares in connection with its investigations.

Purchaser agrees to indemnify, defend and hold Seller harmless from and against any and all loss or liability as a result of Purchaser, its agents, contractors or employees entering on the Property and further agrees to defend Seller from any claim made as a result thereof. This indemnity shall extend to inspections and access to the Property by Purchaser prior to the effective date of this Agreement and shall survive the termination of this Agreement for any reason and shall survive the Closing.

16. NOTICES. Any notices required or permitted to be given under this Agreement by one party to the other shall be in writing, and the same shall be given and shall be deemed to have been served and given if: (i) hand-delivered or, (ii) deposited into the custody of a nationally recognized overnight delivery service addressed to such party at the address herein specified. The address of Seller and Purchaser respectively, for all purposes under this Agreement, and for all notices hereunder, shall be as follows:

A. If to Seller, then to:

Terminal Holdings, LLC  
3033 E. 1st. Avenue Suite 837  
Denver, CO 80206  
Attention: Aaron Bowlds  
Email: abowlds@thoroughbredlp.com

with a copy to:

Baldwin Haspel Burke & Mayer, LLC  
1100 Poydras Street, Suite 3600  
New Orleans, LA 70163  
Attention: Brodie G. Glenn  
Email: bglenn@bhbmllaw.com

B. If to Purchaser, then to:

Plaquemines Port Harbor & Terminal District  
8056 Highway 23, Third Floor  
Belle Chasse, LA 70037  
Attention: Maynard Sanders, Executive Director

With a copy to:

Dwyer, Cambre & Suffern  
3000 West Esplanade Avenue  
Suite 200  
Metairie, LA 70002  
Attention: J. Kendall Rathburn  
Email: krathburn@dwycercambre.com

17. TIME FOR EXECUTION. If this Agreement is not signed by the second party within seven (7) business days after actual confirmed receipt by email or overnight courier of a signed original of this Agreement by the other party, it shall be null and void.

18. TIME OF THE ESSENCE. With respect to the transactions contemplated hereby, time is of the essence; however, if the date for performance of any provision of this Agreement is a Saturday, Sunday, or banking holiday in the State of Louisiana, then the date for performance shall be extended until the next day that is not a Saturday, Sunday, or banking holiday in the State of Louisiana..

19. TAKING PRIOR TO CLOSING. Prior to Closing, risk of loss with regard to the Property shall be borne by Seller. If, prior to Closing, any portion of the Property is damaged or becomes subject to a taking by virtue of condemnation or eminent domain, Purchaser may, in Purchaser's sole discretion, (i) terminate this Agreement, whereupon Escrow Agent shall deliver

the Deposit to Purchaser forthwith, after which neither party hereto shall have any further rights or obligations under this Agreement, or (ii) proceed with the Closing, in which case Seller shall assign its rights to all insurance proceeds and eminent domain and condemnation awards and proceeds to Purchaser at the Closing.

20. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana.

21. SEVERABILITY. In case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

22. MODIFICATIONS. This Agreement shall not be modified, changed or altered in any respect except by written instrument duly executed by both Seller and Purchaser.

23. SURVIVAL. Every representation, warranty, covenant or agreement herein of either party to this Agreement, whether to be performed before or after the Closing Date, shall be deemed to survive the Closing.

24. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement of the parties, and supersedes all prior agreements, whether written or oral.

25. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which will together constitute one instrument. Digital or PDF signatures shall have the same force and effect as originals.

**IN WITNESS WHEREOF**, the undersigned parties have executed this Agreement to be effective as of the Effective Date.

**SELLER:**

**TERMINAL HOLDINGS, LLC**

By: \_\_\_\_\_

Name: Charles Wesley

Title: President

Date Executed: The \_\_\_\_ day of February, 2018

**PURCHASER:**

**PLAQUEMINES PORT HARBOR & TERMINAL DISTRICT**

By: \_\_\_\_\_

Name: Maynard Sanders

Title: Executive Director

Date Executed: The \_\_\_\_ day of \_\_\_\_\_, 2018